

138.146 Evidence of cigarette tax payments -- When payment for units of cigarette tax evidence shall be made -- Consequence of failure to make timely payment.

- (1) The cigarette tax shall be due when any licensed wholesaler or unclassified acquirer takes possession within this state of untax-paid cigarettes.
- (2)
 - (a) The cigarette tax shall be paid by the purchase of stamps by a resident wholesaler within forty-eight (48) hours after the wholesaler receives the cigarettes.
 - (b) A stamp shall be affixed to each package of an aggregate denomination not less than the amount of the cigarette tax on the package.
 - (c) The affixed stamp shall be prima facie evidence of payment of the cigarette tax.
 - (d) Unless stamps have been previously affixed, they shall be affixed by each resident wholesaler prior to the delivery of any cigarettes to a retail location or any person in this state.
 - (e) The evidence of cigarette tax payment shall be affixed to each individual package of cigarettes by a nonresident wholesaler prior to the introduction or importation of the cigarettes into the territorial limits of this state.
 - (f) The evidence of cigarette tax payment shall be affixed by an unclassified acquirer within twenty-four (24) hours after the cigarettes are received by the unclassified acquirer.
- (3)
 - (a) The department shall by regulation prescribe the form of cigarette tax evidence, the method and manner of the sale and distribution of cigarette tax evidence, and the method and manner that tax evidence shall be affixed to the cigarettes.
 - (b) All cigarette tax evidence prescribed by the department shall be designed and furnished in a fashion to permit identification of the person that affixed the cigarette tax evidence to the particular package of cigarettes, by means of numerical rolls or other mark on the cigarette tax evidence.
 - (c) The department shall maintain for at least three (3) years information identifying the person that affixed the cigarette tax evidence to each package of cigarettes. This information shall not be kept confidential or exempt from disclosure to the public through open records.
- (4)
 - (a) Units of cigarette tax evidence shall be sold at their face value, but the department shall allow as compensation to any licensed wholesaler an amount of tax evidence equal to thirty cents (\$0.30) face value for each three dollars (\$3) of tax evidence purchased at face value and attributable to the tax assessed in KRS 138.140(1)(a). No compensation shall be allowed for tax evidence purchased at face value attributable to the surtaxes imposed in KRS 138.140(1)(b) or (c).
 - (b) The department shall have the power to withhold compensation as provided in paragraph (a) of this subsection from any licensed wholesaler for failure to abide by any provisions of KRS 138.130 to 138.205 or any administrative regulations promulgated thereunder. Any refund or credit for unused cigarette tax evidence shall be reduced by the amount allowed as compensation at the time of purchase.

- (5) (a) Payment for units of cigarette tax evidence shall be made at the time the units are sold, unless the licensed wholesaler:
1. Has filed with the department a bond, issued by a corporation authorized to do surety business in Kentucky, in an amount:
 - a. Determined by the department; or
 - b. i. Not less than the monthly average of payments by the wholesaler for the units of cigarette tax evidence purchased in the immediately preceding calendar year, which may be delayed under paragraph (b) of this subsection; and
 - ii. No greater than ten million dollars (\$10,000,000); and
 2. Has registered and agrees to make the payment of tax to the department electronically.
- At no time shall the licensed wholesaler be allowed to delay any payment for units of cigarette tax evidence, including tax, penalty, interest, or collection fees, which would exceed the amount of bond filed with the department.
- (b) Except as provided in paragraph (c) of this subsection, if the licensed wholesaler qualifies under paragraph (a) of this subsection, the licensed wholesaler shall have ten (10) days from the date of purchase to remit payment of cigarette tax, without the assessment of civil penalties under KRS 131.180 or interest under KRS 131.183 during the ten (10) day period.
- (c) 1. The ten (10) day payment period under paragraph (b) of this subsection shall not apply to the payment for units of cigarette tax evidence during the last ten (10) days of the month of June during each fiscal year.
2. All payments for units of cigarette tax evidence made under paragraph (b) of this subsection during the month of June shall be made the earlier of:
- a. The ten (10) day period; or
 - b. June 25.
- (d) If the licensed wholesaler does not make the payment of cigarette tax within the ten (10) day period, or within the period of time under paragraph (c) of this subsection, the department shall:
1. Revoke the license required under KRS 138.195;
 2. Issue a demand for payment in an amount equal to the cigarette tax evidence purchased, plus all penalties, interest, and collection fees applicable, up to the amount of the required bond; and
 3. Require immediate payment of the bond.
- (6) (a) The bond required under subsection (5) of this section shall be on a form and with a surety approved by the department.
- (b) The licensed wholesaler shall be named as the principal obligor and the department shall be named as the obligee within the bond.

- (c) The bond shall be conditioned upon the payment by the licensed wholesaler of all cigarette tax imposed by the Commonwealth.
- (d) The provisions of KRS 131.110 shall not apply to the demand for payment required under subsection (5)(c)2. of this section.
- (7) (a) No tax evidence may be affixed, or used in any way, by any person other than the person purchasing the evidence from the department.
- (b) Tax evidence may not be transferred or negotiated, and may not, by any scheme or device, be given, bartered, sold, traded, or loaned to any other person.
- (c) Unaffixed tax evidence may be returned to the department for credit or refund for any reason satisfactory to the department.
- (8) (a) In the event any retailer receives into his possession cigarettes to which evidence of Kentucky tax payment is not properly affixed, the retailer shall, within twenty-four (24) hours, notify the department of the receipt.
- (b) The notification to the department shall be in writing, stating the name of the person from whom the cigarettes were received and the quantity of those cigarettes.
- (c) The written notice may be:
 - 1. Given to any field agent of the department; or
 - 2. Directed to the commissioner of the Department of Revenue, Frankfort, Kentucky.
- (d) If the notice is given by means of the United States mail, it shall be sent by certified mail.
- (e) Any such cigarettes shall be retained by the retailer, and not sold, for a period of fifteen (15) days after giving the notice provided in this subsection.
- (f) The retailer may, at his option, pay the tax due on those cigarettes according to administrative regulations prescribed by the department, and proceed to sell those cigarettes after the payment.
- (9) (a) Cigarettes stamped with the cigarette tax evidence of another state shall at no time be commingled with cigarettes on which the Kentucky cigarette tax evidence has been affixed.
- (b) Any licensed wholesaler, licensed sub-jobber, or licensed vending machine operator may hold cigarettes stamped with the tax evidence of another state for any period of time, subsection (2) of this section notwithstanding.

Effective: July 1, 2021

History: Amended 2021 Ky. Acts ch. 156, sec. 4, effective July 1, 2021; and ch. 203, sec. 11, effective June 29, 2021. -- Amended 2020 Ky. Acts ch. 91, sec. 39, effective August 1, 2020. -- Amended 2018 Ky. Acts ch. 171, sec. 29, effective April 14, 2018; and ch. 207, sec. 29, effective April 27, 2018. -- Amended 2005 Ky. Acts ch. 85, sec. 347, effective June 20, 2005; ch. 168, sec. 83, effective June 1, 2005; and ch. 173, Part XXV, sec. 3, effective March 20, 2005. -- Amended 2001 Ky. Acts ch. 150, sec. 11, effective January 1, 2002. -- Amended 1990 Ky. Acts ch. 216, sec. 1, effective July 13, 1990. -- Amended 1982 Ky. Acts ch. 386, sec. 3, effective July 15, 1982. -- Created 1962 Ky. Acts ch. 92, sec. 5.

Legislative Research Commission Note (7/1/2021). This statute was amended by 2021 Ky. Acts chs. 156 and 203, which do not appear to be in conflict and have been codified together.

Legislative Research Commission Note (6/1/2005). 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.